IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
FEB 27 1978
MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1977
NO. 77-983

STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF FISHERIES, and ITS DIRECTOR,
Petitioners,
v.
WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION and WASHINGTON KELPERS ASSOCIATION,
Respondents.

STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF FISHERIES, and ITS DIRECTOR,
Petitioners,
v.
PUGET SOUND GILLNETTERS ASSOCIATION, PHILIP SUTHERLAND, PURSE SEINE VESSEL OWNERS ASSOCIATION and FRANK MARINKOVICH,
Respondents.

REPLY OF RESPONDENTS PUGET SOUND GILLNETTERS ASSOCIATION, PHIL SUTHERLAND, PURSE SEINE VESSEL OWNERS ASSOCIATION, FRANK MARINKOVICH AND WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION TO MEMORANDUM OF UNITED STATES AS AMICUS CURIAE

Office & P.O. Address:
3920 Bank of Calif. Center
Seattle, WA 98164

JOSEPH T. MIJICH/JOHN P. WORLD
Attorneys for Purse Seine Vessel Owners Association & Frank Marinkovich

3300 Seattle-First Natl Bank Bldg.
Seattle, WA 98154

CHARLES E. YATES/DOUGLAS M. FRYER
Attorneys for Puget Sound Gillnetters Association & Philip Sutherland

3737 Bank of Calif. Center
Seattle, WA 98164

RICHARD W. PIERSON
Attorney for Washington State Commercial Passenger Fishing Vessel Association

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977
NO. 77-983

STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF FISHERIES, and ITS DIRECTOR,
Petitioners,

v.

WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION and WASHINGTON KELPERS ASSOCIATION,
Respondents.

STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF FISHERIES, and ITS DIRECTOR,
Petitioners,

v.

PUGET SOUND GILLNETTERS ASSOCIATION, PHILIP SUTHERLAND, PURSE SEINE VESSEL OWNERS ASSOCIATION and FRANK MARINKOVICH,
Respondents.

REPLY OF RESPONDENTS PUGET SOUND GILLNETTERS ASSOCIATION, PHIL SUTHERLAND, PURSE SEINE VESSEL OWNERS ASSOCIATION, FRANK MARINKOVICH AND WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION TO MEMORANDUM OF UNITED STATES AS AMICUS CURIAE

ARGUMENT IN REPLY

1. The United States argues (Memo., p. 7) that the cases awaiting decisions by the Ninth Circuit Court of Appeals can be expected to

provide a much more suitable vehicle for resolution of the important conflict that exists between the federal and state courts than the state decisions below. The major issue to be resolved is the interpretation of the language "in common with" in the treaty provision authorizing Indians to fish off the reservation at their usual and accustomed fishing grounds "in common with" other citizens of the Territory. At the time of oral argument on the aforementioned cases pending before the Ninth Circuit Court of Appeals, the presiding Judge of the panel hearing that matter expressly stated that the court will not review the "in common with" issue. Therefore, the state cases before this Court appear to be the only vehicle through which that issue can be reviewed by this Court.

2. The United States further argues (Memo., p. 8) that the record is incomplete in the state cases. Although we feel that the interpretation of the "in common with" language is purely a

question of law which does not require a voluminous record, respondents and petitioner are willing to permit the United States to include with the record before this Court all or any part of the record in United States v. Washington.

3. The United States objects (Memo., p. 8) that it and the Indian Tribes are not parties to the state cases. The United States and the Tribes were expressly invited by the parties and the State Supreme Court to participate as intervenors in those cases, and they refused. On the other hand, two of the respondents in the state cases, the Purse Seine Vessel Owners Association and the Washington State Commercial Passenger Fishing Vessel Assn., petitioned to intervene in United States v. Washington; however, in support of the objection by the United States and the Tribes to such intervention, the Court denied the petitions.

4. The United States questions (Memo., p. 11) whether there is presently any final judgment in the Gillnetters case from which the State of

Washington can seek review. We submit that the decision became final on October 10, 1977, when the Washington Supreme Court denied a petition for rehearing in that case. Respondents' October 7, 1977 emergency motion to which the United States alludes (Memo., p. 11) was a motion for purely remedial relief. It in no way affects the finality of the decision of the Washington State Supreme Court in that case.

5. Although respondents feel that the state cases before this Court are an adequate vehicle to review the major issues in United States v. Washington, particularly since the record in that case can be brought before this Court, we are willing to have the cases presently pending before the Ninth Circuit Court of Appeals consolidated with the state cases before this Court for review of all the issues raised by all these cases. All interested parties would be before the Court and the record would be as complete as the United States desires.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be granted, or, in the alternative, action on the petition should be deferred until the related federal cases are brought before the Court, at which time certiorari should be granted in all the cases (federal and state) and all the issues raised therein should be reviewed by this Court.

Respectfully submitted,

JOSEPH T. MIJICH/JOHN P. WORLD
Attorneys for Respondents
Purse Seine Vessel Owners
Association and
Frank Marinkovich

CHARLES E. YATES/DOUGLAS M. FRYER
Attorneys for Respondents
Puget Sound Gillnetters
Association and
Philip Sutherland

RICHARD W. PIERSON
Attorney for Washington State
Commercial Passenger Fishing
Vessel Association